COMMENTS AND RECOMMENDATIONS
BY THE PEOPLE OF THE STATE OF ILLINOIS
ON SPRING 2009 ELECTRICITY PROCUREMENT PROCESS

June 1, 2009

The People of the State of Illinois ("the People"), by and through Illinois Attorney General Lisa Madigan, submit these comments and recommendations in response to the Request for Comments issued by the Illinois Commerce Commission ("ICC") on May 15, 2009, pursuant to 220 ILCS 5/16-111.5(o). The Illinois Power Agency ("IPA") Spring 2009 procurement process produced winning bid prices that will reduce Commonwealth Edison and Ameren customers' bills by nine percent over the coming year -- starting today. The People's comments focus on two aspects of the procurement process that contributed to that outcome:

(1) winning bid prices closely tracked low prices in the wholesale electricity market;

(2) an increased number of winning bidders increased the level of competition in the procurement process; and

In addition, the People offer several recommendations for future procurements:

(1) the IPA should convene workshops to prepare for demand-response solicitations in the 2010 procurement process;

(2) bids for long-term contracts should be solicited to diversify the portfolio in a manner that increases price stability and reliability;

(3) protocols should be established for communications between the IPA and ICC, as well as for communications between the IPA and bidders/prospective bidders; and

(4) the IPA should draw on the Illinois Power Agency Trust Fund to cover the cost of hiring staff.

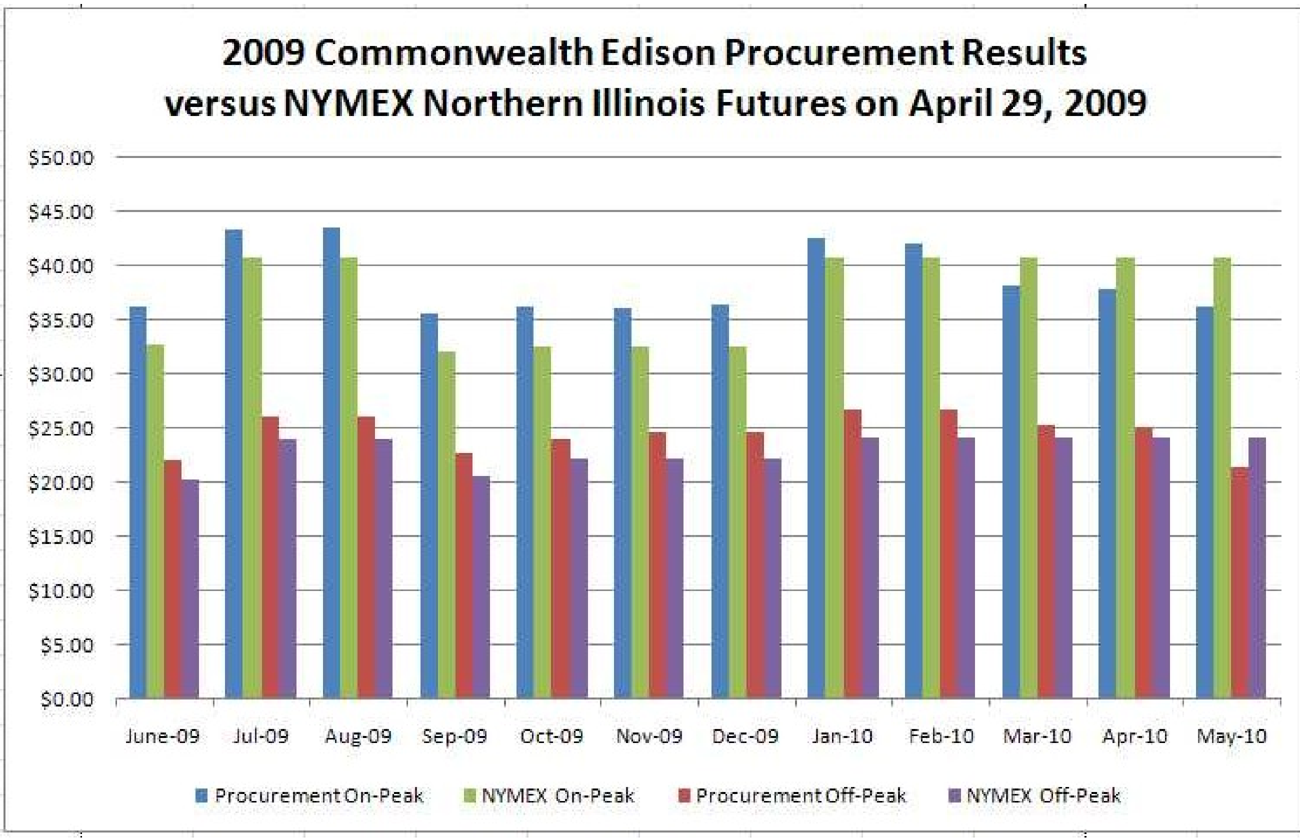
COMMENTS ON THE SPRING 2009 PROCUREMENT EVENT

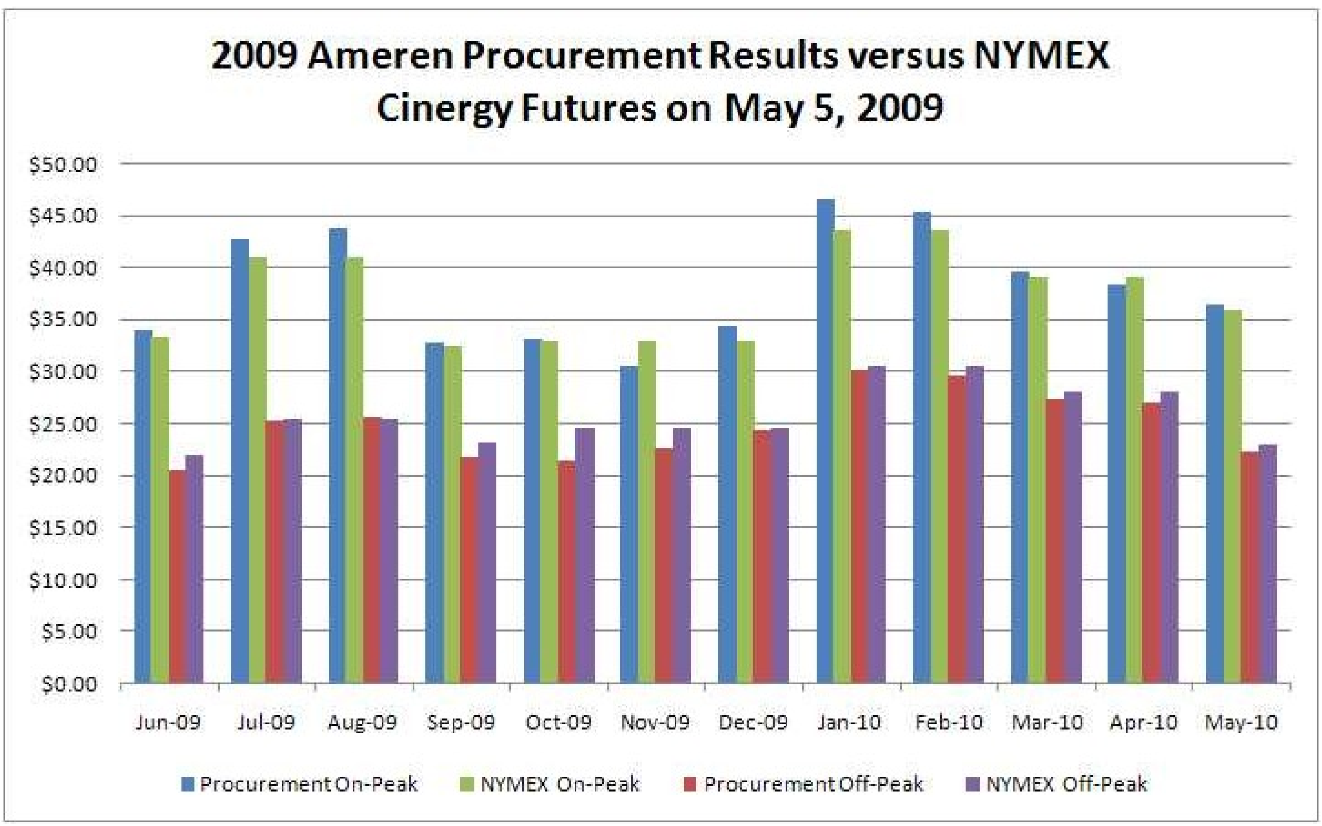
The IPA's first-ever procurement event produced winning bid prices that will decrease monthly electric bills for ComEd and Ameren customers, starting today (June 1, 2009). A typical residential bill will decrease approximately nine percent, which will result in average annual savings of approximately $100 per customer. Winning bid prices were significantly lower this year because, as discussed below, bid prices mirrored declines in wholesale electricity markets.

I. Winning bid prices closely tracked low prices in the wholesale electricity market.

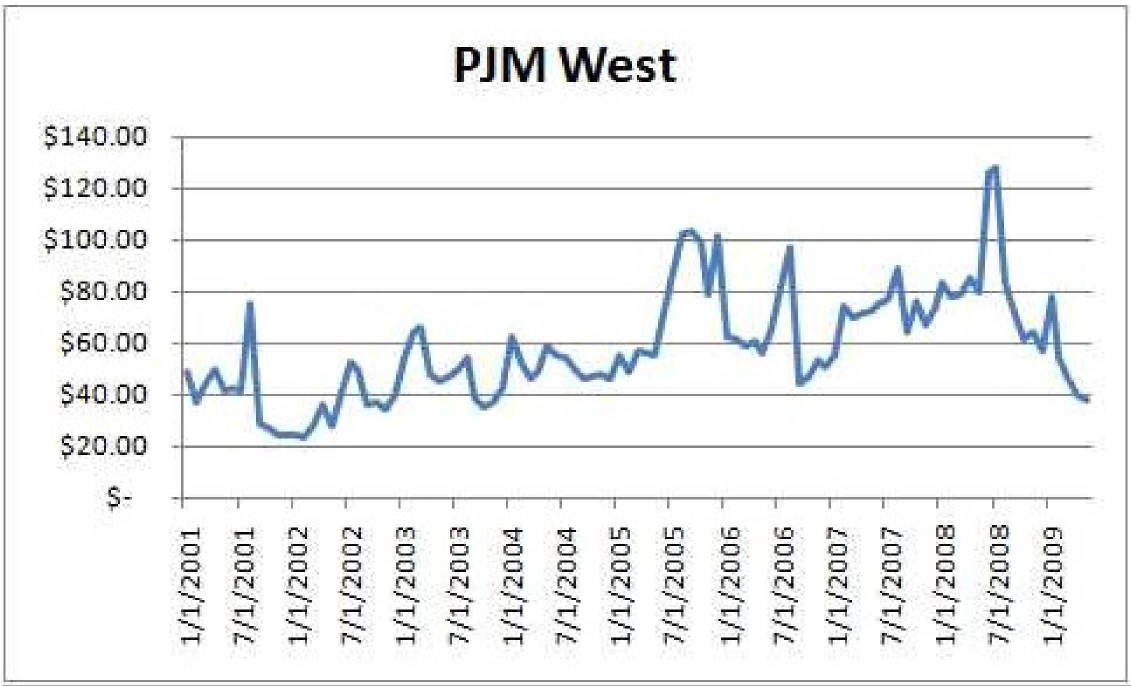
In 2006, the People were highly critical of the prices produced by the reverse auction that ComEd and Ameren used to purchase electricity – in part because the 2006 auction clearing-prices were over 20 percent higher than contemporaneous NYMEX prices. The new procurement process, which was established by Section 16-111.5 of the Public Utilities Act ("PUA") and Section 1-75 of the Illinois Power Agency Act ("IPA Act"), appears to have corrected that problem: In 2008, the first time that the new procurement process was used, winning bid prices were within 4 - 5 percentage points of market prices.

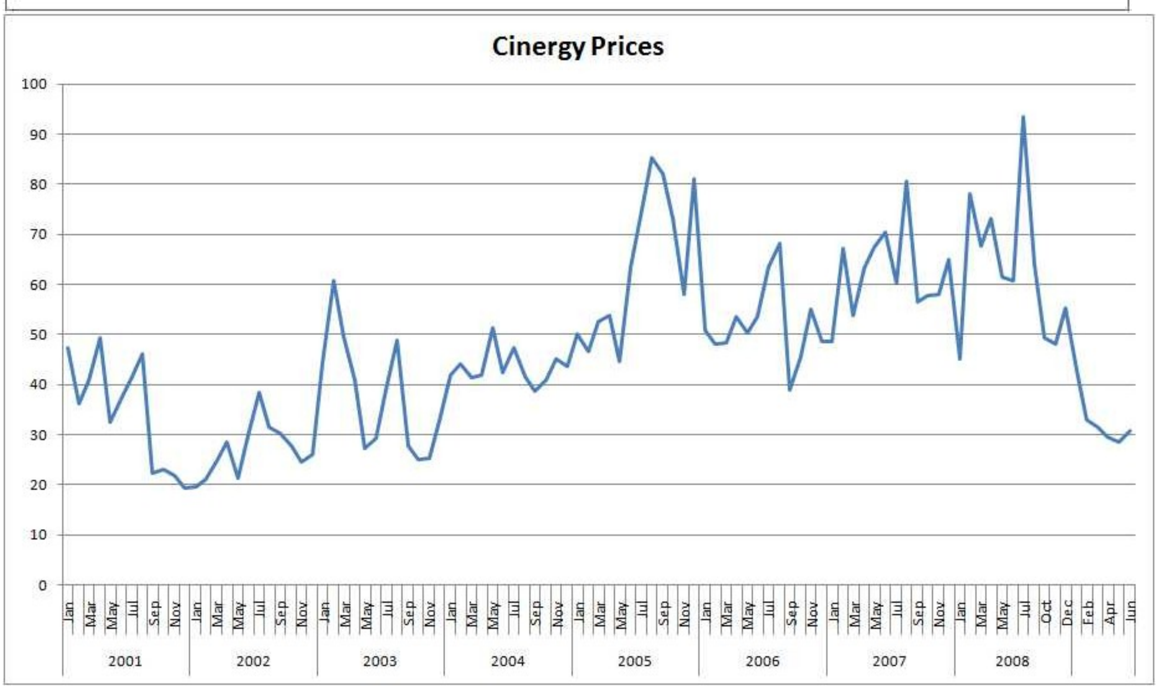
The 2009 winning bid prices provide further evidence that the new procurement process is producing prices consistent with the wholesale market. As shown in the graphs on the following page, the 2009 winning bid prices for standard energy products purchased for the coming year (June 1, 2009 – May 31, 2010) again closely track (within 4-5 percentage points) NYMEX futures for comparable products over the same time period.


2009 Commonwealth Edison Procurement Results
versus NYMEX Northern Illinois Futures on April 29, 2009
$50.00
$45.00
$40.00
$35.00
$30.00
$25.00
$20.00
$15.00
$10.00
$5.00
$0.00
June-09
Jul-09
Aug-09
Sep-09
Oct-09
Nov-09
Dec-09
Jan-10
Feb-10
Mar-10
Apr-10
May-10
Procurement On-Peak
NYMEX On-Peak
Procurement Off-Peak
NYMEX Off-Peak


2009 Ameren Procurement Results versus NYMEX
Cinergy Futures on May 5, 2009
$50.00
$45.00
$40.00
$35.00
$30.00
$25.00
$20.00
$15.00
$10.00
$5.00
$0.00
Jun-09
Jul-09
Aug-09
Sep-09
Oct-09
Nov-09
Dec-09
Jan-10
Feb-10
Mar-10
Apr-10
May-10
Procurement On-Peak
NYMEX On-Peak
Procurement Off-Peak
NYMEX Off-Peak

The load-weighted average winning bid price for the coming year (June 1, 2009 – May 31, 2010) was just over $33/MW for both ComEd and Ameren. This average price, which is almost fifty percent lower than the average price produced by the 2008 procurement, mirrors wholesale energy prices in PJM and MISO – which are at the lowest level since 2003:





One of the reasons that the new bidding process has produced winning bid prices that closely track wholesale energy prices is that the PUA mandates the use of market-based benchmarks to reject above-market bids. 220 ILCS 5/16-111.5(e)(3). A new IPA provision, which becomes effective today (June 1, 2009), requires the use of similar benchmarks in the renewable energy credit procurement process. 20 ILCS 3855/1-75(c)(1). The IPA benchmarking provision was enacted in the wake of last year's renewable energy procurement event, in which in-state bidders appeared to exploit the preference for in-state resources by adding a premium to their bids. (20 ILCS 3855/1-75(c)(3).

In anticipation of the new law mandating benchmarks for renewables, the IPA and ICC developed and used benchmarks in the 2009 renewable energy credit procurement process. The benchmarks appear to have been effective. However, based on publicly available data, it is not clear whether the benchmarks were used to reject above-market bids for in-state resources or whether they simply discouraged bidders from attempts to exploit the in-state preference. In either case, the result is that customers will pay significantly less for in-state renewable resources in 2009 than in 2008:

	ComEd 2009 ($/REC)[1]	**ComEd 2008** ($/REC)	**Ameren 2009** ($/REC)	**Ameren 2008** ($/REC)
Illinois Wind	21.13	35.72	16.66	29.32
Illinois Non-wind	13.69	21.85	13.46	17.50
Adjoining State Wind	--	18.35	--	21.20
Adjoining State Non-Wind	--	5.74	--	5.50
Other State Wind	--	7.34	--	5.65
Other State Non-Wind	--	4.25	--	--

[1] Each Renewable Energy Credit (REC) represents the environmental attributes corresponding to one megawatt-hour (MWh) of energy produced from qualified renewable energy resources.

II. The increased number of winning bidders in the 2009 procurement events is a sign of more robust competition in the procurement process.

The 2009 procurement process attracted a larger number of participants that submitted winning bids than last year's procurement. As shown in the table below, increased numbers of winning bidders can be seen across the board, but were particularly significant in two Ameren procurement events. Last year, there were only two winning bidders in the Ameren standard energy product procurement event -- this year there were eight. Last year, there were only four winning bidders in the Ameren renewable energy credit procurement event -- this year there were fourteen.

Procurement Event	Winning Bidders in 2008 Procurement Events	Winning Bidders in 2009 Procurement Events
ComEd Energy	8	10
Ameren Energy	2	8
Ameren Capacity	7	12
ComEd Renewable Energy Credits	8	18
Ameren Renewable Energy Credits	4	14

The relatively low number of winning bidders in certain procurement events last year – particularly the Ameren energy and renewable energy procurements – raised questions about the adequacy of competition in the bidding process. The increased number of winning bidders this year is a sign of more robust competition, a key determinant of whether efficient prices are produced by the process. Maintaining and expanding the number of participants in the procurement process will be essential to its future success.

RECOMMENDATIONS FOR FUTURE PROCUREMENT EVENTS

I. The IPA should convene workshops to prepare for demand-response solicitations in 2010 procurement process.

A new PUA provision, which becomes effective today (June 1, 2009), requires the procurement of demand-response measures "whenever the cost is lower than procuring comparable capacity products." 220 ILCS 16-111.5(b)(3)(ii). Effective implementation of this provision is essential to protect consumers from the excessive capacity prices produced by the PJM Reliability Pricing Model – which are currently passed through to ComEd customers. The provision will also be important to Ameren customers because, although they currently pay (relatively) lower capacity prices produced through the IPA procurement process, they may in the future be required to pay capacity prices set by a new MISO-administered auction process. So far, it appears that the MISO process is producing prices at least as high as the PJM Reliability Pricing Model.

The People recommend that the IPA convene workshops to address implementation of the new demand-response provisions, in advance of the formal 2010 procurement planning process. Incorporating demand-side bidding into the procurement process has the potential to produce significant savings for consumers – but it will require a major paradigm shift. To ensure that the IPA will be in a position to actively solicit demand-side measures during the 2010 procurement process, it is important to address this issue as soon as possible – and to involve demand-response providers and PJM/MISO representatives in the workshop process.

II. Bids for long-term contracts should be solicited to diversify the portfolio in a manner that increases price stability and reliability.

The PUA requires utilities to prepare annual procurement plans based on a planning horizon of at least five years. 220 ILCS 5/16-111.5(b). However, the PUA makes clear that this is a minimum, and that "consideration of contracts longer than five years and related forecast data" is not precluded in utility procurement plans. *Id.* A new Section of the IPA Act, which governs purchases of renewable energy credits on behalf of Alternative Retail Electric Suppliers, states that the IPA "shall, whenever possible, enter into long-term contracts." 20 ILCS 3855/1-56(c).

So far, the procurement process for ComEd and Ameren has involved solicitation of relatively short-term products – one to three-year energy contracts and one-year renewable energy credit contracts. This exclusive focus on short term products has several disadvantages. First, there is a greater risk of price volatility associated with short term products. Second, short term contracts attract bids only from existing generation – they cannot be used as a basis to finance new generating facilities. Consequently, over-reliance on short term contracts will likely constrain supply, which will cause electricity prices to increase and/or reliability to decrease.

During the 2010 planning process, the IPA should take steps to diversify the ComEd and Ameren portfolios to include long term contracts. This should include consideration of contracts of up to 30 years, particularly for renewable energy facilities. In the absence of long-term contracts, which can be used to obtain financing, REC prices are likely to rise substantially due to increased demand created by renewable portfolio standards in Illinois and other states. Increased REC prices would make it more costly for ComEd and Ameren to meet annual renewable portfolio standard targets and/or make it impossible to comply with the targets within statutory price caps.

III. Protocols should be established for communications between the IPA and ICC, as well as for communications between the IPA and bidders/prospective bidders.

During the initial year of operation, there have been no formal rules in place to govern contacts with the IPA, outside of the communication protocols put in place during procurement events. Before moving into the next procurement cycle, there are two areas that the IPA may wish to address: (1) communications between the IPA and ICC; and (2) communications between the IPA and bidders/prospective bidders.

It may be helpful to regularize communications between the IPA and ICC, by replacing *ad hoc* contacts with weekly calls/meetings to improve coordination and efficiency. This would create more predictability for the agencies and for stakeholders. In addition, the IPA should consider formalizing procedures for communications with outside parties – particularly bidders and prospective bidders. The protocols put in place in connection with procurement events are not sufficient. To ensure adequate transparency and fairness to all parties, it would be helpful to establish rules to govern, track, and publish all communications by bidders/prospective bidders with the IPA relating to current and future planning and procurement processes.

IV. The IPA should draw on the Illinois Power Agency Trust Fund to cover the cost of hiring staff.

Under the 2007 rate relief settlement, several electric generators were required to pay $25 million into the Illinois Power Agency Trust Fund. 220 ILCS 5/16-111.5A(i). This money is available to the Agency to use for any purpose except "to pay for the indebtedness of the Agency." 20 ILCS 3855/1-57(c). The Agency should draw on this fund to cover the cost of hiring additional staff to handle its growing responsibilities under the PUA and IPA Act.